




South Carolina Department of Insurance

HENRY McMASTER
Governor

RAYMOND G. FARMER
Director

BULLETIN NUMBER 2017-11

TO: All Insurers, HMOs, Producers, and Brokers Licensed to Transact Insurance Business in the State of South Carolina

FROM: Raymond G. Farmer
Director of Insurance 

SUBJECT: Electronic Delivery of Insurance Policies in South Carolina
2017 S.C. Act No. 70 (Act No. 70)

DATE: September 29, 2017

I. PURPOSE

The purpose of this bulletin is to notify insurers and producers transacting insurance business in this state of a recent legislative change. A copy of 2017 S.C. Act No. 70, summarized below, is attached to this bulletin.

II. GENERAL SUMMARY OF ACT NO. 70 (R. 105, H. 3488)

Act No. 70, which takes effect January 1, 2018, is intended to facilitate the electronic transaction of insurance business in South Carolina. It does not supersede, replace or conflict with the South Carolina Uniform Electronic Transactions Act (UETA), the Electronic Signatures in Global Commerce Act (ESIGN) or other requirements imposed by the Gramm Leach Bliley Act (GLBA) or the Health Insurance Portability and Accountability Act (HIPAA) for insurance transactions.

Participation by consumers in electronic delivery is *strictly voluntary* and must be provided at *no cost* to the consumer.

Insurers may *not* cancel, refuse to issue, or refuse to renew a policy because the applicant or insured refuses to agree to receive mailings electronically.

Act No. 70 adds a new Article 7 to Chapter 55 of the Code of Laws of South Carolina 1976, as amended. Article 7 consists of two new Code sections: Section 38-55-710 and Section 38-55-720. Below is a discussion of each new Code section.

III. NEW SECTION 38-55-710

Section 38-55-710 defines the terms "Delivered by electronic means" and "Party."

“Delivered by electronic means” consists of either (1) delivery to an email address where the party has consented to receive notices or documents *or* (2) placement of the documents on an electronic network or website accessible by the Internet, mobile application, computer, mobile device, tablet or other electronic device where the party has agreed to receive notices along with a separate written notice of the placement sent to the party’s email address.

“Party” includes all parties to the insurance transaction including the applicant, insured, policyholder or annuity contract holder.

IV. NEW SECTION 38-55-720

- A. General Provisions. Section 38-55-720(A) provides that notices or evidence of coverage may be delivered, stored and presented by electronic means if they meet the requirements of the UETA and Subsection (C) of this new Code section. Delivery by electronic means in accordance with this Code section is equivalent to first class mail and first class mail postage prepaid. *See* S.C. Code Ann. § 38-55-720(B).
- B. Voluntary Participation. Insurers may **not** cancel, refuse to issue, or refuse to renew a policy because the applicant or insured refuses to agree to receive mailings electronically. *See* S.C. Code Ann. § 38-55-720(C)(2).
- C. Procedural Requirements for Electronic Delivery. Section 38-55-720(C) sets forth in detail the procedures insurers must use when delivering notices or documents by electronic means. Under Subsection (C), an insurer may deliver a notice or document by electronic means to a party if all of the below conditions are met:
 - 1. The party has “affirmatively consented” to electronic delivery and has not withdrawn such consent;
 - 2. Before the party has given such consent, the insurer has provided a “clear and conspicuous statement” informing that party of the following:
 - a. The “right or option” to have the notice or document “provided or made available in paper or another non-electronic form” at no additional cost;
 - b. The right to withdraw consent at any time;
 - c. The specific notice or document, or categories thereof, that may be delivered by electronic means;
 - d. The means by which a party may, at no additional cost, obtain a paper copy of a notice or document delivered by electronic delivery; and
 - e. The procedure for:
 - i. Withdrawing consent; and

ii. Updating information needed to contact the party electronically;

3. The transmission or delivery method must include conspicuous language concerning its subject or purpose; e.g., the subject line of an email contains a description of the message content or attachment such that the recipient will know that it carries an important notice or document. The legislature specifically included this provision to address the concern that consumers might inadvertently ignore or delete an electronic communication unless it is reasonably clear that it deals with an important subject matter related to an actual insurance transaction and is not, for example, mere “spam” or other unsolicited communication the recipient is likely to disregard.

4. Prior to consent, the party:

- a. Is provided with a statement of the hardware and software requirements for access to and retention of a notice or document delivered by electronic means; and
- b. Consents electronically, or confirms consent electronically, in a manner reasonably demonstrating that he or she can access information in the electronic form that will be used for notices or documents.

D. Special Additional Notice Requirements for Subsequent Change in Electronic Delivery Hardware or Software Requirements. Section 38-55-720(C)(1)(e) provides that if, after consent, there is a change in the hardware or software requirements creating a material risk that a party will not be able to access or retain a subsequent notice or document, then the insurer must, *in addition* to the above procedural requirements:

- a. Provide the party with a statement of the revised hardware and software requirements; and
- b. Otherwise comply with the provisions of Subsection (A) and UETA.

If an insurer fails to comply with these two requirements, the party has the right to treat such failure as a withdrawal of the party’s consent. See S.C. Code Ann. § 38-55-720(I). For example, in the event of litigation between the insurer and a policyholder where the insurer has failed to give proper notice of a change pursuant to Subsection (C)(1)(e), the policyholder can take the position that he or she withdrew consent to electronic delivery, regardless of whether any actual withdrawal of consent took place.

E. Special Rules for Cancellation, Non-renewal or Termination. When an insurer knows that a notice of cancellation, notice of non-renewal, or notice of termination sent by electronic means was not received by the party, it must deliver a hardcopy of such notice by first-class mail, postage prepaid, to the last known mailing address of a party of cancellation. For the purposes of this requirement, the determination of whether an

insurer sends, or a party receives, a notice of cancellation, notice of non-renewal, or notice of termination shall be governed by the provisions of the UETA (S.C. Code Ann. § 26-6-150) governing when an electronic record is sent and received. *See* S.C. Code Ann. § 38-55-720(D).

F. Withdrawal of Consent.

1. When Effective. Withdrawal of consent by a party to electronic delivery is **effective four business days after receipt of the withdrawal by the insurer.** *See* S.C. Code Ann. § 38-55-720(H)(2).

2. No Effect on Previous Notices. Withdrawal of consent does not affect the legal effectiveness, validity, or enforceability of a notice or document delivered by electronic means to the party before the withdrawal of consent is effective. *See* S.C. Code Ann. § 38-55-720(H)(1).

G. Procedures for Insurers with Policyholders Who Have Consented to Electronic Delivery Prior to the Act's Effective Date of January 1, 2018.

1. The Act does not apply to a notice or document delivered by an insurer in an electronic form before January 1, 2018, if a party has consented prior to that date to electronic delivery "otherwise allowed by law." *See* S.C. Code Ann. § 38-55-720(J).

2. An insurer that has the consent of a party to receive certain notices or documents in an electronic form on file before January 1, 2018, and intends to deliver additional notices or documents to the party in an electronic form must, pursuant to S.C. Code Ann. § 38-55-720(K), notify the party of the following before it delivers additional notices or documents electronically pursuant to the Act:

- a. The notices or documents that may be delivered by electronic means under the Act that were not previously delivered electronically; and
- b. The party's right to withdraw at any time consent to have notices or documents delivered by electronic means.

H. Security and Confidentiality. An insurer delivering a notice or document by electronic means must take "appropriate and necessary measures reasonably calculated to ensure that the system for furnishing the notices of documents is secure and protects the confidentiality of information as defined by applicable law." An insurer "who is in compliance with the Health Insurance Portability and Accountability Act, 45 C.F.R. 164.512(b), or the Gramm Leach Bliley Act, 16 C.F.R. 314.1, must be considered to be in compliance." *See* S.C. Code Ann. § 38-55-720(N).

I. Relationship of the Act to Other Laws. Section 38-55-720 contains four provisions specifically addressing how the rules governing delivery of insurance documents by electronic means are to be applied in conjunction with other laws:

1. Laws Regarding Content and Timing of Notices. The Act does not affect “requirements related to content or timing of any notice or document required under applicable law.” *See* S.C. Code Ann. § 38-55-720(E).
 2. Verification or Acknowledgement of Receipt. If a provision of Title 38 or “other applicable law requiring a notice or document to be provided to a party expressly requires verification or acknowledgment of receipt of the notice or document, then the notice or document may be delivered by electronic means only if the method used provides for such verification or acknowledgment of receipt.” *See* S.C. Code Ann. § 38-55-720(F).
 3. No Effect on Otherwise Legally Valid Policy or Contract. Section 38-55-720(G) provides that the legal effectiveness, validity, or enforceability of the underlying contract or policy of insurance executed by a party may not be denied **solely**:
 - a. Because of the insurer’s failure to obtain electronic consent to electronic delivery; or
 - b. Because of the insurer’s failure to obtain confirmation of consent of the party in a manner that reasonably demonstrates that the party can access information in the electronic form that will be used for electronic delivery of notices or documents in accordance with S.C. Code Ann. § 38-5-5(C)(1)(d)(ii).
 4. Notarization, Acknowledgement and Verification. If a provision of Title 38 or other applicable law requires a signature, notice, or document to be notarized, acknowledged, verified, or made under oath, then the requirement is satisfied if the electronic signature of the person authorized to perform those acts, together with all other information required to be included by the provision, is attached to or logically associated with the signature, notice, or document. *See* S.C. Code Ann. § 38-55-720(L).
- J. Record Retention. An insurer delivering a notice or other document pursuant to this article must retain records in the manner provided in UETA (S.C. Code Ann. § 26-6-120) and the provisions of Title 38 requiring insurers to allow the Department to inspect their records and to respond to inquiries and requests for special reports of the Department. *See* S.C. Code Ann. § 38-55-720(O). *See also* S.C. Code Ann. §§ 38-13-120, 38-13-140 & 38-13-160.
- K. Does Not Affect Other Electronic Commerce Laws. The Act is expressly intended to provide an insurer additional options for the delivery of electronic notices and documents and “may not be construed to modify, limit, or supersede the provisions of the federal Electronic Signatures in Global and National Commerce Act, Public Law 106-229, as amended [ESIGN].” It also establishes that an “insurer choosing to use procedures outlined in ESIGN, UETA, or other applicable law or regulation governing

such notice or documents must be considered to be in compliance with this section.”
See S.C. Code Ann. § 38-55-720(M).

V. GUIDELINES AND PROCEDURES FOR IMPLEMENTATION OF E-DELIVERY CONSENT AND NOTICE REQUIREMENT

Section 38-55-720(P) permits the Director of Insurance to promulgate by bulletin the requirements necessary to implement the provisions of this new law. What follows are the initial implementation requirements.

A copy of a notice must be filed with the Department sixty (60) days prior to use of any electronic notice or form.

Notices related to personal lines coverages are subject to prior approval. Commercial notices must be filed with the Department within 30 days’ use.

All notices must be filed via SERFF. The notice may be filed independently as a form filing. Alternatively, the notice may be included as a part of another filing by the insurer so long as the filing: (1) clearly identifies the program(s) for which the notice is being filed; and (2) the filing is submitted as a form/rate, form/ rule, or form/rate/rule filing.

Please be reminded that filings must be submitted by insurer and by line of business, although multiple companies are permitted on filings.

VI. QUESTIONS

Questions regarding this bulletin should be submitted via email to P&Cmail@doi.sc.gov and include complete contact information (with phone number and email address) for follow up.

Bulletins are the method by which the Director of Insurance formally communicates with persons and entities regulated by the Department. Bulletins are Departmental interpretations of South Carolina insurance laws and regulations and provide guidance on the Department’s enforcement approach. Bulletins do not provide legal advice. Readers should consult applicable statutes and regulations or contact an attorney for legal advice or for additional information on the impact of that legislation on their specific situation.

South Carolina General Assembly
122nd Session, 2017-2018

A70, R105, H3488

STATUS INFORMATION

General Bill

Sponsors: Reps. Sandifer and Hixon

Document Path: I:\council\bill\ncd\11073cz17.docx

Introduced in the House on January 17, 2017

Introduced in the Senate on January 31, 2017

Last Amended on May 9, 2017

Passed by the General Assembly on May 10, 2017

Governor's Action: May 19, 2017, Signed

Summary: Insurance

HISTORY OF LEGISLATIVE ACTIONS

Date	Body	Action Description with journal page number
1/17/2017	House	Introduced and read first time (House Journal-page 13)
1/17/2017	House	Referred to Committee on Labor, Commerce and Industry (House Journal-page 13)
1/25/2017	House	Committee report: Favorable with amendment Labor, Commerce and Industry (House Journal-page 2)
1/26/2017	House	Amended (House Journal-page 10)
1/26/2017	House	Read second time (House Journal-page 10)
1/26/2017	House	Roll call Yeas-99 Nays-0 (House Journal-page 12)
1/26/2017	House	Unanimous consent for third reading on next legislative day (House Journal-page 13)
1/27/2017	House	Read third time and sent to Senate (House Journal-page 1)
1/31/2017	Senate	Introduced and read first time (Senate Journal-page 21)
1/31/2017	Senate	Referred to Committee on Banking and Insurance (Senate Journal-page 21)
2/23/2017	Senate	Committee report: Favorable Banking and Insurance (Senate Journal-page 19)
3/7/2017	Senate	Read second time (Senate Journal-page 27)
3/7/2017	Senate	Roll call Ayes-39 Nays-2 (Senate Journal-page 27)
5/9/2017	Senate	Amended (Senate Journal-page 60)
5/10/2017		Scrivener's error corrected
5/10/2017	Senate	Read third time and returned to House with amendments (Senate Journal-page 29)
5/10/2017	House	Concurred in Senate amendment and enrolled (House Journal-page 85)
5/10/2017	House	Roll call Yeas-98 Nays-0 (House Journal-page 86)
5/15/2017		Ratified R 105
5/19/2017		Signed By Governor
5/26/2017		Effective date 5/19/17
5/31/2017		Act No. 70

View the latest [legislative information](#) at the website

VERSIONS OF THIS BILL

[1/17/2017](#)

[1/25/2017](#)

[1/26/2017](#)

[2/23/2017](#)

[5/9/2017](#)

[5/10/2017](#)

(A70, R105, H3488)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 7 TO CHAPTER 55, TITLE 38 SO AS TO ALLOW AN INSURER TO DELIVER, STORE, OR PRESENT EVIDENCE OF INSURANCE COVERAGE BY ELECTRONIC MEANS, TO ESTABLISH CERTAIN CONDITIONS THAT MUST BE MET BEFORE A NOTICE OR DOCUMENT MAY BE DELIVERED BY ELECTRONIC MEANS, TO REQUIRE THE INSURER TO DELIVER A HARDCOPY NOTICE OF CANCELLATION, NONRENEWAL, OR TERMINATION BY FIRST-CLASS MAIL IF THE INSURER KNOWS THE DOCUMENTS WERE NOT RECEIVED BY THE INSURED WHEN DELIVERED BY ELECTRONIC MEANS, TO REQUIRE THE PARTY TO VERIFY OR ACKNOWLEDGE RECEIPT OF THE ELECTRONICALLY DELIVERED NOTICE OR DOCUMENT IN CERTAIN CIRCUMSTANCES, TO PROVIDE THAT A WITHDRAWAL OF CONSENT DOES NOT AFFECT THE LEGAL EFFECTIVENESS, VALIDITY, OR ENFORCEABILITY OF THE NOTICE OR DOCUMENT, TO REQUIRE AN INSURER TO NOTIFY THE PARTY OF CERTAIN PRIVILEGES BEFORE SENDING ADDITIONAL NOTICES OR DOCUMENTS SUBJECT TO CONSENT TO RECEIVE CERTAIN NOTICES OR DOCUMENTS, TO ALLOW FOR A PARTY TO ELECTRONICALLY SIGN ELECTRONICALLY DELIVERED DOCUMENTS, TO REQUIRE THE INSURER TO RETAIN RECORDS, AND TO AUTHORIZE THE DIRECTOR TO PROMULGATE REGULATIONS TO IMPLEMENT THE PROVISIONS OF THIS SECTION.

Be it enacted by the General Assembly of the State of South Carolina:

Evidence of insurance, electronic documents authorized

SECTION 1. Chapter 55, Title 38 of the 1976 Code is amended by adding:

“Article 7

Electronic Documents

Section 38-55-710. As used in this article:

(1) 'Delivered by electronic means' includes:

(a) delivery to an electronic mail address at which a party has consented to receive notices or documents; or

(b) placement on an electronic network or site accessible by means of the Internet, mobile application, computer, mobile device, tablet, or another electronic device, together with separate written notice of the placement that must be provided by electronic mail to the address at which the party has consented to receive notice or by another delivery method that has been consented to by the party.

(2) 'Party' means a recipient of a notice or document required as part of an insurance transaction, including, but not limited to, an applicant, an insured, a policyholder, or an annuity contract holder.

Section 38-55-720. (A) Subject to the provisions of subsection (C), notice to a party of another document required under applicable law in an insurance transaction or that is to serve as evidence of insurance coverage may be delivered, stored, and presented by electronic means if it meets the requirements of Chapter 6, Title 26, the South Carolina Uniform Electronic Transactions Act.

(B) Delivery of a notice or document pursuant to this section must be considered equivalent to the following delivery methods:

(1) first-class mail; and

(2) first-class mail, postage prepaid.

(C)(1) A notice or document may be delivered by electronic means by an insurer to a party if:

(a) the party has affirmatively consented to the method of delivery and has not withdrawn consent;

(b) the party, before giving consent, is provided with a clear and conspicuous statement informing the party of:

(i) the right or option of the party to have the notice or document provided or made available in paper or another non-electronic form at no additional cost;

(ii) the right of the party at any time to withdraw his consent to have a notice or document delivered by electronic means;

(iii) the specific notice or document or categories of notices or documents that may be delivered by electronic means during the course of the relationship between the insurer and the party;

(iv) the means, after consent is given, by which a party may obtain a paper copy of a notice or document delivered by electronic means at no additional cost; and

(v) the procedure a party must follow to withdraw consent to have a notice or document delivered by electronic means and to update information needed to contact the party electronically;

(c) the transmission or delivery method used for the electronic notice includes conspicuous language concerning its subject or purpose;

(d) the party:

(i) before giving consent, is provided with a statement of the hardware and software requirements for access to and retention of a notice or document delivered by electronic means; and

(ii) consents electronically, or confirms consent electronically, in a manner that reasonably demonstrates that the party can access information in the electronic form that will be used for notices or documents delivered by electronic means for which the party has given consent; and

(e) after consent of the party is given, if a change occurs in the hardware or software requirements needed to access or retain a notice or document delivered by electronic means that creates a material risk that the party will not be able to access or retain a subsequent notice or document to which the consent applies, then the insurer shall:

(i) provide the party with a statement of the revised hardware and software requirements for access to and retention of a notice or document delivered by electronic means; and

(ii) comply with the requirements of subsection (A).

(2) No insurer may cancel, refuse to issue, or refuse to renew a policy because the applicant or insured refuses to agree to receive mailings electronically pursuant to this subsection.

(D) A hardcopy of a notice of cancellation, notice of non-renewal, or notice of termination must be delivered by first-class mail, postage prepaid, to the last known mailing address of a party if the insurer knows that the notice of cancellation, notice of non-renewal, or notice of termination sent by electronic means was not received by the party. For the purposes of this subsection, the determination of whether an insurer sends, or a party receives, a notice of cancellation, notice of non-renewal, or notice of termination shall be governed by Section 26-6-150.

(E) This section does not affect requirements related to content or timing of any notice or document required under applicable law.

(F) If a provision of this title or other applicable law requiring a notice or document to be provided to a party expressly requires verification or acknowledgment of receipt of the notice or document, then the notice or document may be delivered by electronic means only if the method used provides for verification or acknowledgment of receipt.

(G) The legal effectiveness, validity, or enforceability of the underlying contract or policy of insurance executed by a party may not be denied solely because of the failure to obtain electronic consent or confirmation of consent of the party pursuant to subsection (C)(1)(d)(ii).

(H) A withdrawal of consent by a party:

(1) does not affect the legal effectiveness, validity, or enforceability of a notice or document delivered by electronic means to the party before the withdrawal of consent is effective; and

(2) is effective four business days after receipt of the withdrawal by the insurer.

(I) Failure by an insurer to comply with subsection (C)(1)(e) may be treated, at the election of the party, as a withdrawal of consent for purposes of this section.

(J) This section does not apply to a notice or document delivered by an insurer in an electronic form before the effective date of this section to a party who, before that date, had consented to receive notice or document in an electronic form otherwise allowed by law.

(K) If the consent of a party to receive certain notices or documents in an electronic form is on file with an insurer before the effective date of this section and if, pursuant to this section, an insurer intends to deliver additional notices or documents to the party in an electronic form, then, prior to delivering such additional notices or documents electronically, the insurer shall notify the party of:

(1) the notices or documents that may be delivered by electronic means under this section that were not previously delivered electronically; and

(2) the party's right to withdraw at any time consent to have notices or documents delivered by electronic means.

(L) If a provision of this title or applicable law requires a signature, notice, or document to be notarized, acknowledged, verified, or made under oath, then the requirement is satisfied if the electronic signature of the person authorized to perform those acts, together with all other information required to be included by the provision, is attached to or logically associated with the signature, notice, or document.

(M) This section may not be construed to modify, limit, or supersede the provisions of the federal Electronic Signatures in Global and National Commerce Act, Public Law 106-229, as amended. It is intended to provide an insurer additional options for the delivery of electronic notices and documents. An insurer choosing to use procedures outlined in E-SIGN, UETA, or other applicable law or regulation governing such notice or documents must be considered to be in compliance with this section.

(N) An insurer delivering a notice or document by electronic means shall take appropriate and necessary measures reasonably calculated to ensure that the system for furnishing the notices or documents is secure and protects the confidentiality of information as defined by applicable law. An insurer who is in compliance with the Health Insurance

Portability and Accountability Act, 45 C.F.R. 164.512(b), or the Gramm Leach Bliley Act, 16 C.F.R. 314.1, must be considered to be in compliance with this section.

(O) An insurer delivering a notice or other document pursuant to this article shall retain records in the manner provided in Sections 26-6-120, 38-13-120, 38-13-140, and 38-13-160.

(P) The director or his designee may promulgate, by bulletin, regulation, or order the requirements necessary to implement the provisions of this section.”

Time effective

SECTION 2. This act takes effect on January 1, 2018.

Ratified the 15th day of May, 2017.

Approved the 19th day of May, 2017.
